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OFFICE OF PETITIONS

ON PETITION

In re Application of
Bruce W. Kneller
Application No. 10/785,600
Filed: February 23, 2004
Attorney Docket No. BKNL-001-101

This is a decision on the request for reconsideration filed July 7, 2008, to revive the above identified application under 37 CFR 1.137(a)¹.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

A non-Final Office Action was mailed May 3, 2007 and set a three (3) month shortened statutory period for reply. Since the maximum period of time obtainable for an extension of time had elapsed and since no proper reply had been received, the application became abandoned on August 6, 2007. Accordingly, a Notice of Abandonment was mailed December 27, 2007. In a petition filed April 24, 2008 petitioner asserted that they were unavoidably delayed from filing a timely response to the Office action due to the attorney of record's failure to take action in this matter, failure to respond to their inquiries regarding the status of this patent application and finally his failure to advise the applicant that this patent application had become abandoned.

That petition was dismissed in a decision mailed May 6, 2008. The U.S. Patent and

¹A grantable petition under 37 CFR 1.137(a) must be accompanied by:

(1) the required reply, unless previously filed; In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(l);

(3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and applicant is bound by the consequences of those actions or inactions. The decision advised that petitioner's delay caused by the mistakes or negligence of his voluntarily chosen representative however does not constitute unavoidable delay within the meaning of 35 U.S.C. § 133 or 37 CFR 1.137(a).²

In view of the dismissal and instead of a renewed petition under 1.137(a), in the alternative, a petition to revive the application was filed May 13, 2008 under 37 CFR 1.137(b). That petition was granted in a decision mailed June 9, 2008.

Comes now petitioner arguing again that the delay was unavoidable.

With the instant renewed petition however, petitioner has not provided any additional proof to persuade the USPTO that in fact the delay was unavoidable. Furthermore, the application is no longer abandoned since the petition filed May 13, 2008 under the unintentional standard was granted.

Consideration has been given to the underlying delay that caused the abandonment under both the unavoidable and unintentional standards. In view thereof, and as the application has been returned to active status, there are no additional issues regarding unavoidable delay to be decided.

This matter is being referred to Technology Center 1612 for further examination.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

²Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (Comm'r Pat. 1891).